

NEW YORK COURT OF APPEALS

Everhome Mortgage Company v. Nuchem Aber

No. 85, New York Court of Appeals (November 17, 2022)

SUMMARY

In this foreclosure action, the New York Court of Appeals held that the statute of limitations began to run on April 30, 2009, when the mortgage debt was accelerated by the commencement of the first foreclosure action, even though that action was later dismissed without prejudice. The second foreclosure action, filed on June 24, 2015, was time-barred under CPLR 213(4) because it was commenced more than six years after acceleration. The court affirmed dismissal of the complaint and summary judgment on the counterclaim under RPAPL article 15, as the plaintiff failed to raise a factual issue regarding timeliness.

OPINION

PER CURIAM.

State of New York MEMORANDUM Court of Appeals This memorandum is uncorrected and subject to revision before publication in the New York Reports. No. 85 Everhome Mortgage Company, Appellant, v. Nuchem Aber et al., Respondents, et al., Defendants. Mikelle V. Bliss, for appellant. Anthony R. Filosa, for respondents. MEMORANDUM: The Appellate Division order should be affirmed, with costs.

In this foreclosure action, defendant Equity Recovery Corporation (Equity) established that the statute of limitations began to run on April 30, 2009, when plaintiff commenced the first action to foreclose the mortgage (see *Albertina Realty Co. v Rosbro* -1- -2- No. 85 Realty Corp., 258 NY 472, 476 [1932]; *Freedom Mortgage Corp. v Engel*, 37 NY3d 1, 22- 23 [2021]).

That first action was dismissed without prejudice based on plaintiff’s failure to appear for a court conference. Plaintiff did not commence this second foreclosure action until June 24, 2015, more than six years after acceleration of the debt (see CPLR 213 [4]).

We agree with the Appellate Division that plaintiff failed to raise an issue of fact in opposition to Equity’s motion for, among other things, dismissal of the amended complaint as time-barred and for summary judgment on its counterclaim pursuant to RPAPL article 15 (195 AD3d 682, 689 [2d Dept 2021]). Order affirmed, with costs, in a memorandum. Acting Chief Judge Cannataro and Judges Rivera, Garcia, Wilson, Singas and Troutman concur.

Decided November 17, 2022 -2-

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